IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 881 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMESH KANJIBHAI PATNI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
MR KP RAWAL, APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 15/11/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This is an appeal preferred by the appellant who came to be convicted by the City Sessions Court by judgment and order dated 29th June, 1999 rendered in Sessions Case No.281 of 1998 convicting the appellant for the offence of murder of Suneeta, a minor girl, allegedly committed by him at about 7.30 p.m. at Sanjaynagar Chhapra, Naroda Road, Ahmedabad on 25th March, 1998. The appellant is sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo S.I. for a period of six months.

2. As per the prosecution case, the appellant Ramesh Kanjibhai Patni had a quarrel with Laxman Zhina Patni, father of the victim girl, on 18th March, 1998 in connection with viewing of a film on video. The appellant allegedly assaulted Laxman Zhina and others and as a consequence thereof, Laxman Zhina had to shift alongwith his family to his brother's house out of fear. Laxman Zhina had lodged an F.I.R. in connection with that incident on 18th March, 1998.

2.1 On the day of the incident i.e. 25th March, 1998, Suneeta, daughter of Laxman Zhina, had gone to the house formerly occupied by the family at about 2000 hours. She came across the appellant and the appellant, in turn, caught her by neck and gave her a push forcefully, as a result, she fell down sustaining injury on occipital region of her head. This was noticed by her brother Ashok Laxman and one Mangabhai Chhelabhai Patni, a neighbour. Victim

Suneeta went home crying and told her mother Leelaben that the appellant had thrown her to the floor asking as to why she is frequently going there. Suneeta complained of severe pain and there was swelling on the occipital region. Leelaben told her that she would be taken to the hospital after Laxman Zhina returned home in the evening. When Laxman Zhina arrived home at about 9.00 p.m., he was told by Leelaben about the incident. The next morning, when they tried to wake up Suneeta, she started raising shouts. Therefore, she was taken to Shardaben Hospital in an autorickshaw. There they were told that her condition is critical and, therefore, she was taken to Civil Hospital, Ahmedabad where she was given treatment. During the course of treatment, she expired at about 11.00 a.m. F.I.R. was lodged in this regard, offence registered and case investigated. The police, having found sufficient material against the appellant, lodged F.I.R. in the Court of Metropolitan Magistrate who, in turn, committed the case to the City Sessions Court, Ahmedabad and Sessions Case No.281 of 1998 came to be registered.

2.2 Charge was framed against the appellant at Exh.3 to which he pleaded not guilty and claimed to be tried.

2.3 Considering the evidence led by the prosecution, the Trial Court came to the conclusion that the prosecution was successful in establishing

charge against the appellant and convicted him for the offence of murder of Suneeta and passed sentence against him, as stated hereinabove.

3. We have before us the record and proceedings through which we have gone carefully. We have heard learned advocate Mr. Shethna for the appellant and learned APP Mr. Rawal for the respondent – State.

4. Learned advocate Mr. Shethna submitted that there are two eye-witnesses to the incident namely, Ashok Laxman and Manga Chhela. Out of these two eye-witnesses, Manga Chhela has not supported he prosecution case at all. Witness Ashok Laxman happens to be brother of the deceased who claims to have seen the incident but if his deposition is seen, there are improvements, contradictions and omissions which would render his deposition unreliable. He is an interested witness and his presence at the place of incident cannot be considered as natural. His conduct also indicates that he could not have been present at the place of incident. Mr. Shethna, therefore, submitted that when the case of the prosecution hangs on solitary evidence of an interested eye-witness whose deposition suffers from several defects, conviction could not have been recorded. Mr. Shethna, therefore, submitted that the conviction may be set aside by allowing the appeal.

4.1 Mr. Shethna submitted further, by way of an alternative submission; that, even if complicity of

the appellant in the incident is accepted by the court, his conviction could, at the most, have been under Section 304 Part II or Part I but not for murder; in any event. Intention or knowledge cannot be attributed to the appellant which would render him responsible for the offence of murder. He has not used any weapon, there was no pre-meditation and he is alleged to have given a simple push to the victim. Mr. Shethna submitted that although there is a charge that he twisted the neck of the deceased, there is no evidence in that regard led by the prosecution and, therefore, the conviction under Section 302 may be altered to conviction under Section 304 Part II or Part I. Mr. Shethna also submitted that the medical evidence, if examined, would also indicate that there could not have been any intention or knowledge on the part of the appellant to cause death of the deceased or to cause injuries sufficient in ordinary course of nature to cause death.

4.2 Mr. Shethna relied on the decision in the case of **SARABJEET SINGH AND OTHERS vs. STATE OF U.P.** [AIR 1983 Supreme Court 529], in support of his submission.

5. Learned APP Mr. Rawal has opposed this appeal. According to him, the conviction is well-founded. He submitted that the appellant has caused death of a young helpless girl for no proximate cause. The incident has roots in an incident which had occurred 7 days back to which the victim was not

even a party. At the time of incident, the victim had not caused any provocation or instigation. The assault was committed by the appellant for no legitimate cause. Mr. Rawal submitted that the incident has to be viewed from the angle that the victim was a young girl who was assaulted upon by the appellant who was a fully grown man of 30 years of age. The injuries would reflect the force with which the push was given. The push was given by holding the deceased girl by neck. The medical evidence clearly indicates that apart from injury to the head, there were injuries to Cervical Vertebrae in the form of fractures. This would clearly show the force with which the neck was held and push was given. This would clearly indicate the intention and/or knowledge on the part of the appellant. According to Mr. Rawal, the case, therefore, would squarely fall within the ambit of Section 302 of I.P.C. and not Section 304 of I.P.C.

5.1 Mr. Rawal further submitted that the decision relied upon by Mr. Shethna would not be applicable to the facts of the present case. In that case, it was a case where there was a quarrel and in course of the transaction, the minor boy was picked up and thrown on the floor. In the instant case, there was no quarrel, no provocation, no instigation and still an assault is committed on a young girl who was unarmed, unaware and helpless. He, therefore, submitted that the appeal may be dismissed.

6. We have taken into consideration rival side contentions. On going through the record, we find that the prosecution case mainly depends on the evidence of p.w.2 (Exh.9) Ashok Laxman who is the brother of the deceased and an eye-witness to the incident. He says that his sister Suneeta was studying in III Standard. On the day of the incident i.e. 25th March, 1998, Suneeta had gone to the old house for bringing 'Daftar' (school-bag). He also pursued her. He deposes about the earlier incident dated 17th March, 1998 when the appellant had a quarrel with his uncle Kanubhai Zhinabhai and the appellant had given pipe blows to his uncle. The quarrel had roots in viewing a video cassette. He says that because of the incident, their house was closed and they shifted to the house of his uncle at Sanjaynagar. He says that the appellant had intimidated his father. According to him, while he was pursuing his sister, he saw that the appellant caught hold of Suneeta from neck and threw her/pushed her to the ground and then rushed into his house. His sister started crying. The witness says that he was frightened and, therefore, he immediately took his sister to his uncle Babu's place. There his sister Suneeta told about the incident to their mother Leelaben. He says that his sister had swelling and there was no bleeding. He deposes further that in the next morning his sister was crying and was taken by his parents in an autorickshaw to Shardaben Hospital and from there to Civil Hospital. He indicates the previous incident

as the motive for the present incident. He identified the appellant in the court. He also identified the clothes worn by the deceased at the time of the incident. The witness is cross-examined. Interestingly, it emerges from cross-examination that the witness had stated in his police statement that before he could rescue his sister, Rameshbhai Kanjibhai had twisted the neck of his sister and had thrown her down. He states that he did not go to lodge the F.I.R. as his father was not present. He also says that he did not go to the hospital as he was asleep next morning but he went there subsequently.

7. The F.I.R. is lodged by Laxmanbhai Zhinabhai. He deposes about the previous incident and also about his wife informing him about the present incident at about 9.00 p.m. on day of incident when he reached home. He says that next morning, Suneeta started crying and he, therefore, took her to hospital, initially at Shardaben Hospital and then to Civil Hospital where she succumbed to the injuries at about 11.00 a.m. He says that he lodged the F.I.R. with the police. He is also cross-examined but nothing special turns on his cross-examination. The witness is not an eye-witness but he only deposes about the deceased having told her mother about how the incident occurred and that she told him about the incident.

7.1 P.W.8 Mangabhai Chelabhai Patni (Exh.27)

happens to be the neighbour. He also is projected as an eye-witness by the prosecution but he has not supported the prosecution case at all. He has been treated as a hostile witness and is cross-examined.

8. The medical evidence is in the form of deposition of Dr. Dipakkumar Champaklal (Exh.18) and post-mortem notes (Exh.13). Dr. Dipakkumar Champaklal is a doctor who had performed the post-mortem. He has indicated that he noticed a hematoma on left leg and right toe. He says that he noticed a hematoma on occipital region on the upper portion of the neck of the size of 3cm x 3cm x 2cm and fracture of C2 and C3 vertebra. The injuries were ante-mortem. He noticed corresponding internal injuries on occipital region in the brain substance spinal canal. He also noticed rupture of spinal cord and fracture of C2 and C3 vertebra. He expressed opinion that these injuries were possible by catching the deceased with neck, twisting the neck and throwing on floor with force which would result into death of the deceased positively. The doctor also opined that in such cases, instantaneous death may not result but death may occur after 30 to 40 hours also. The doctor has also opined that the injuries were sufficient in ordinary course of nature to cause death. The doctor is cross-examined on various aspects regarding *rigor mortis, etc.* He has not agreed to the suggestion that the injuries were possible in a vehicular accident or even a fall while playing. He denied the suggestion that such injuries

were possible if the head of the deceased had hit a wall. He agreed that the cause of death was damage to the spinal cord and resultant haemorrhage.

9. From the above evidence, it is clear that the involvement of the appellant in the incident is established through deposition of witness Ashok Laxman. It is true that he is brother of the deceased but that by itself would not render his deposition susceptible to doubt. The court would be required to examine the position closely. We have given a close look to his deposition. We do not find any reason to doubt the veracity of this witness. His presence at the place is natural. Simply because he did not intervene and said that he was frightened would not make any change. In fact, he says that before he could intervene, the incident was over and the appellant had run into his house. This witness was aged 21 years when the incident occurred and had just completed his studies and his reaction was natural. It is unfortunate that Mangabhai Chelabhai has not supported the prosecution case but that should not make any difference for the reason that evidence of Ashok Laxman is found to be trustworthy.

9.1 The evidence of Ashok gets corroboration from the fact that the deceased after going home gave the history of the incident to her mother Leelaben and Leelaben, in her deposition, has stated how the incident occurred which clearly implicates the appellant. In addition, there is an entry in the

vardi book of Shaherkotda Police Station at Exh.20 on the basis of information given by Medical Officer Dr. Shaikh to Police Constable Ranjitsinh, which also implicates the appellant. Therefore, there is no scope for doubting the involvement of the appellant in the incident.

10. The next question that arises for determination by this court and which has been vehemently pressed in service by learned advocate Mr. Shethna is whether the case would fall under Section 304 or Section 302 of I.P.C.

10.1 The medical evidence is very clear that the injuries were sufficient in ordinary course of nature to cause death. It is true that no weapon is used but the appellant is alleged to have caught hold of the deceased by neck and thrown her to the floor with force. The force used in the episode is such that two vertebrae are found to be fractured and there is a hematoma on occipital region of the head with a corresponding injury to brain and spinal cord resulting in haemorrhage, which is the ultimate cause of death. The evidence indicates that these injuries could not have been caused in an accident or accidental fall while playing or dashing of head with a wall.

10.2 These details are required to be viewed in the backdrop of the fact that the deceased was a young girl, unarmed and unaware of likely attack.

When the incident occurred, the appellant was a fully grown man of 30 years of age. The appellant attacked the deceased all of a sudden without any rhyme or reason. The deceased gave no cause for him to attack her. There was no quarrel, no dispute or altercation and still the appellant committed the assault.

10.3 The appellant had motive to do so and the motive was relatively a stale incident that had occurred about a week back from the date of the incident and that too with the uncle of the deceased and the deceased was not involved in the incident at all.

11. The incident cannot be said to have occurred in heat of passion or in a sudden fight nor can it be said that the appellant did not take undue advantage of the situation. The strength of the victim minor girl was, in no way, a match to the strength of a fully grown man of 30 years of age – the appellant. The appellant attacked her all of a sudden when she was unarmed, unaware and helpless. The attack is committed with bare hands but with such a force that it has resulted into injuries which are found to be sufficient in ordinary course of nature to cause death by medical expert. The contention of learned advocate Mr. Shethna, therefore, that intention or knowledge cannot be inferred and the case, therefore, would not fall within the meaning of murder, cannot be accepted. The case, therefore, would fall in Clause Thirdly of Section 300 of I.P.C. The court

cannot overlook the fact that the attack was committed with such a brutal force, though with bare hands, that two of the vertebrae were fractured and spinal cord was ruptured and brain was damaged. A girl was caught by neck and thrown to floor for no fault of hers except that she was niece of a person with whom the appellant had a quarrel about a week back from the date of the incident. The contention of learned advocate Mr. Shethna, therefore, that the case would fall in the category of culpable homicide not amounting to murder punishable under Section 304 of I.P.C. for want of knowledge or intention of causing death or causing bodily injury sufficient in ordinary course of nature to cause death cannot be accepted.

12. We are of the view that the Trial Court was justified in convicting the appellant for the offence of murder and, therefore, in absence of any justification or merit in the appeal, the appeal has to fail.

13. The appeal is dismissed. The judgment and order dated 29th June, 1999 rendered by learned Additional Sessions Judge, Court No.13, Ahmedabad in Sessions Case No.281 of 1998 stands confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

hki